

59-13-101. Short title.

This act is known as the "Motor and Special Fuel Tax Act."

Enacted by Chapter 6, 1987 General Session

59-13-102. Definitions.

As used in this chapter:

(1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the operation of aircraft.

(2) "Clean fuel" means:

(a) the following special fuels:

(i) propane;

(ii) compressed natural gas;

(iii) liquified natural gas; or

(iv) electricity; or

(b) any motor or special fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II.

(3) "Commission" means the State Tax Commission.

(4) (a) "Diesel fuel" means any liquid that is commonly or commercially known, offered for sale, or used as a fuel in diesel engines.

(b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

(5) "Distributor" means any person in this state who:

(a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at retail or wholesale;

(b) produces, refines, manufactures, or compounds motor fuel in this state for use, distribution, or sale in this state;

(c) is engaged in the business of purchasing motor fuel for resale in wholesale quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability; or

(d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

(i) federally certificated air carriers; and

(ii) other persons.

(6) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations and that is considered destined for nontaxable off-highway use.

(7) "Exchange agreement" means an agreement between licensed suppliers where one is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier or the other supplier's customer at the loading rack of the terminal where the delivering supplier holds an inventory position.

(8) "Federally certificated air carrier" means a person who holds a certificate issued by the Federal Aviation Administration authorizing the person to conduct an all-cargo operation or scheduled operation, as defined in 14 C.F.R. Sec. 110.2.

(9) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is generally used in an engine or motor for the generation of power, including aviation fuel, clean fuel, diesel fuel, motor fuel, and special fuel.

(10) "Highway" means every way or place, of whatever nature, generally open to the use of the public for the purpose of vehicular travel notwithstanding that the way or place may be temporarily closed for the purpose of construction, maintenance, or repair.

(11) "Motor fuel" means fuel that is commonly or commercially known or sold as gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

(12) "Motor fuels received" means:

(a) motor fuels that have been loaded at the refinery or other place into tank cars, placed in any tank at the refinery from which any withdrawals are made directly into tank trucks, tank wagons, or other types of transportation equipment, containers, or facilities other than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not involving transportation are made directly; or

(b) motor fuels that have been imported by any person into the state from any other state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when, and the place where, the interstate transportation of the motor fuel is completed within the state by the person who at the time of the delivery is the owner of the motor fuel.

(13) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used, designed, or maintained for transportation of persons or property which:

(i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds;

(ii) has three or more axles regardless of weight; or

(iii) is used in a combination of vehicles when the weight of the combination of vehicles exceeds 26,000 pounds gross vehicle weight.

(b) "Qualified motor vehicle" does not include a recreational vehicle not used in connection with any business activity.

(14) "Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay which consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a refinery or terminal into a motor vehicle, rail car, or vessel.

(15) "Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel fuel. Removal does not include:

(a) loss by evaporation or destruction; or

(b) transfers between refineries, racks, or terminals.

(16) (a) "Special fuel" means any fuel regardless of name or character that:

(i) is usable as fuel to operate or propel a motor vehicle upon the public highways of the state; and

(ii) is not taxed under the category of aviation or motor fuel.

(b) Special fuel includes:

- (i) fuels that are not conveniently measurable on a gallonage basis; and
- (ii) diesel fuel.
- (17) "Supplier," as used in Part 3, Special Fuel, means a person who:
 - (a) imports or acquires immediately upon importation into this state diesel fuel from within or without a state, territory, or possession of the United States or the District of Columbia;
 - (b) produces, manufactures, refines, or blends diesel fuel in this state;
 - (c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to which there has been no previous taxable sale or use; or
 - (d) is in a two party exchange where the receiving party is deemed to be the supplier.
- (18) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage of diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel is removed for distribution at a rack.
- (19) "Two party exchange" means a transaction in which special fuel is transferred between licensed suppliers pursuant to an exchange agreement.
- (20) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations.
- (21) "Use," as used in Part 3, Special Fuel, means the consumption of special fuel for the operation or propulsion of a motor vehicle upon the public highways of the state and includes the reception of special fuel into the fuel supply tank of a motor vehicle.
- (22) "User," as used in Part 3, Special Fuel, means any person who uses special fuel within this state in an engine or motor for the generation of power to operate or propel a motor vehicle upon the public highways of the state.
- (23) "Ute tribal member" means an enrolled member of the Ute tribe.
- (24) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- (25) "Ute trust land" means the lands:
 - (a) of the Uintah and Ouray Reservation that are held in trust by the United States for the benefit of:
 - (i) the Ute tribe;
 - (ii) an individual; or
 - (iii) a group of individuals; or
 - (b) specified as trust land by agreement between the governor and the Ute tribe meeting the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

Amended by Chapter 369, 2012 General Session

59-13-103. List of clean fuels provided to tax commission -- Report to the Legislature.

- (1) The Air Quality Board shall annually provide to the tax commission a list of fuels that are clean fuels under Section 59-13-102.
- (2) The Air Quality Board created under Section 19-2-103 shall in conjunction

with the State Tax Commission prepare and submit to the Legislature before January 1, 1995, a report evaluating the impacts, benefits, and economic consequences of the clean fuel provisions of Sections 59-13-201 and 59-13-301.

Amended by Chapter 153, 2008 General Session

59-13-104. Tax rate decals -- Posted on pump.

(1) Beginning October 1, 1998, a person who sells motor fuel or undyed special fuel in a retail sale shall post a tax rate decal on each motor fuel or undyed special fuel pump or dispensing device.

(2) The commission shall produce the tax rate decals that are required to be posted under Subsection (1).

(3) The decals shall:

(a) clearly and conspicuously disclose the name of each tax and the tax rate of each tax imposed on motor fuel or special fuel;

(b) show the tax imposed separately by federal, state, and local taxing entities; and

(c) be obtained at no cost to motor fuel and special fuel retailers from the commission.

Enacted by Chapter 253, 1998 General Session

59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax in limited circumstances.

(1) (a) Subject to the provisions of this section, a tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.

(b) In lieu of the tax imposed under Subsection (1)(a) and subject to the provisions of this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a), rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in Section 59-13-102 and are sold, used, or received for sale or use in this state.

(2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state or sold at refineries in the state on or after the effective date of the rate change.

(3) (a) No motor fuel tax is imposed upon:

(i) motor fuel that is brought into and sold in this state in original packages as purely interstate commerce sales;

(ii) motor fuel that is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) motor fuel or components of motor fuel that is sold and used in this state and distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this state; or

(iv) motor fuel that is sold to the United States government, this state, or the

political subdivisions of this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the tax exemption provided under Subsection (3)(a)(iv).

(4) The commission may either collect no tax on motor fuel exported from the state or, upon application, refund the tax paid.

(5) (a) All revenue received by the commission under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the motor fuel tax.

(6) (a) The commission shall determine what amount of motor fuel tax revenue is received from the sale or use of motor fuel used in motorboats registered under the provisions of the State Boating Act, and this amount shall be deposited in a restricted revenue account in the General Fund of the state.

(b) The funds from this account shall be used for the construction, improvement, operation, and maintenance of state-owned boating facilities and for the payment of the costs and expenses of the Division of Parks and Recreation in administering and enforcing the State Boating Act.

(7) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased motor fuel from a licensed distributor or from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (7)(a).

(8) (a) The commission shall refund annually into the Off-Highway Vehicle Account in the General Fund an amount equal to the lesser of the following:

- (i) .5% of the motor fuel tax revenues collected under this section; or
- (ii) \$1,050,000.

(b) This amount shall be used as provided in Section 41-22-19.

(9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that is sold, used, or received for sale or use in this state is reduced to the extent provided in Subsection (9)(b) if:

(i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel is paid to the Navajo Nation;

(ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or not the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (9) for the administration of the reduction of tax.

(b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that

difference is greater than \$0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (9)(b)(ii) is less than or equal to \$0.

(ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the motor fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the motor fuel.

(c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under a tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of motor fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (9).

(e) The agreement required under Subsection (9)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (9); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on motor fuel, any change in the reduction of taxes under this Subsection (9) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (9)(f)(ii).

- (ii) The notice described in Subsection (9)(f)(i) shall state:
 - (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on motor fuel;
 - (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A); and
 - (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).
- (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not permitted under this Subsection (9) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.
- (h) If there is a conflict between this Subsection (9) and the agreement required by Subsection (9)(a), this Subsection (9) governs.

Amended by Chapter 308, 2010 General Session

59-13-201.5. Refund of taxes impacting Ute tribe and Ute tribal members.

(1) In accordance with this section, the Ute tribe may receive a refund from the state of amounts paid to a distributor for taxes imposed on the distributor in accordance with Section 59-13-204 if:

- (a) the motor fuel is purchased from a licensed distributor;
- (b) the Ute tribe pays the distributor as provided in Section 59-13-204;
- (c) the motor fuel is purchased for use by:
 - (i) the Ute tribe; or
 - (ii) a Ute tribal member from a retail station:
 - (A) wholly owned by the Ute tribe; and
 - (B) that is located on Ute trust land; and
- (d) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of Subsection (3).

(2) In addition to the agreement required by Subsection (1), the commission shall enter into an agreement with the Ute tribe that:

- (a) provides an allocation formula or procedure for determining:
 - (i) the amount of motor fuel sold by the Ute tribe to a Ute tribal member; and
 - (ii) the amount of motor fuel sold by the Ute tribe to a person who is not a Ute tribal member; and
- (b) provides a process by which:
 - (i) the Ute tribe obtains a refund permitted by this section; and
 - (ii) reports and remits motor fuel tax to the state for sales made to persons who are not Ute tribal members.

(3) The agreement required under Subsection (1):

- (a) may not:
 - (i) authorize the state to impose a tax in addition to a tax imposed under this chapter; or
 - (ii) provide a refund, credit, or similar tax relief that is greater or different than the refund permitted under this section;
 - (iii) affect the power of the state to establish rates of taxation; and
- (b) shall:

- (i) provide that the state agrees to allow the refund described in this section;
- (ii) be in writing;
- (iii) be signed by:
 - (A) the governor; and
 - (B) the chair of the Business Committee of the Ute tribe;
- (iv) be conditioned on obtaining any approval required by federal law; and
- (v) state the effective date of the agreement.

(4) (a) The governor shall report to the commission by no later than February 1 of each year as to whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(b) If an agreement meeting the requirements of this Subsection (4) is terminated, the refund permitted under this section is not allowed beginning the January 1 following the date the agreement terminates.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules regarding the procedures for seeking a refund agreed to under the agreement described in Subsection (2).

Amended by Chapter 382, 2008 General Session

59-13-202. Refund of tax for agricultural uses on individual income and corporate franchise and income tax returns -- Application for permit for refund -- Division of Finance to pay claims -- Rules permitted to enforce part -- Penalties.

(1) As used in this section:

(a) (i) Except as provided in Subsection (1)(a)(ii), "claimant" means a resident or nonresident person.

(ii) "Claimant" does not include an estate or trust.

(b) "Estate" means a nonresident estate or a resident estate.

(c) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may claim:

(i) as provided by statute; and

(ii) regardless of whether, for the taxable year for which the claimant, estate, or trust claims the tax credit, the claimant, estate, or trust has a tax liability under:

(A) Chapter 7, Corporate Franchise and Income Taxes; or

(B) Chapter 10, Individual Income Tax Act.

(d) "Trust" means a nonresident trust or a resident trust.

(2) Any claimant, estate, or trust that purchases and uses any motor fuel within the state for the purpose of operating or propelling stationary farm engines and self-propelled farm machinery used for nonhighway agricultural uses, and that has paid the tax on the motor fuel as provided by this part, is entitled to a refund of the tax subject to the conditions and limitations provided under this part.

(3) (a) A claimant, estate, or trust desiring a nonhighway agricultural use refund under this part shall claim the refund as a refundable tax credit on the tax return the claimant, estate, or trust files under:

(i) Chapter 7, Corporate Franchise and Income Taxes; or

(ii) Chapter 10, Individual Income Tax Act.

(b) A claimant, estate, or trust not subject to filing a tax return described in Subsection (3)(a) shall obtain a permit and file claims on a calendar year basis.

(c) Any claimant, estate, or trust claiming a refundable tax credit under this section is required to furnish any or all of the information outlined in this section upon request of the commission.

(d) A refundable tax credit under this section is allowed only on purchases on which tax is paid during the taxable year covered by the tax return.

(4) In order to obtain a permit for a refund of motor fuel tax paid, an application shall be filed containing:

(a) the name of the claimant, estate, or trust;

(b) the claimant's, estate's, or trust's address;

(c) location and number of acres owned and operated, location and number of acres rented and operated, the latter of which shall be verified by a signed statement from the legal owner;

(d) number of acres planted to each crop, type of soil, and whether irrigated or dry; and

(e) make, size, type of fuel used, and power rating of each piece of equipment using fuel. If the claimant, estate, or trust is an operator of self-propelled or tractor-pulled farm machinery with which the claimant, estate, or trust works for hire doing custom jobs for other farmers, the application shall include information the commission requires and shall all be contained in, and be considered part of, the original application. The claimant, estate, or trust shall also file with the application a certificate from the county assessor showing each piece of equipment using fuel. This original application and all information contained in it constitutes a permanent file with the commission in the name of the claimant, estate, or trust.

(5) Any claimant, estate, or trust claiming the right to a refund of motor fuel tax paid shall file a claim with the commission by April 15 of each year for the refund for the previous calendar year. The claim shall state the name and address of the claimant, estate, or trust, the number of gallons of motor fuel purchased for nonhighway agricultural uses, and the amount paid for the motor fuel. The claimant, estate, or trust shall retain the original invoice to support the claim. No more than one claim for a tax refund may be filed annually by each user of motor fuel purchased for nonhighway agricultural uses.

(6) Upon commission approval of the claim for a refund, the Division of Finance shall pay the amount found due to the claimant, estate, or trust. The total amount of claims for refunds shall be paid from motor fuel taxes.

(7) The commission may promulgate rules to enforce this part, and may refuse to accept as evidence of purchase or payment any instruments which show alteration or which fail to indicate the quantity of the purchase, the price of the motor fuel, a statement that it is purchased for purposes other than transportation, and the date of purchase and delivery. If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

(8) Any claimant, estate, or trust aggrieved by the decision of the commission with respect to a refundable tax credit or refund may file a request for agency action, requesting a hearing before the commission.

(9) Any claimant, estate, or trust that makes any false claim, report, or statement, as claimant, estate, trust, agent, or creditor, with intent to defraud or secure a refund to which the claimant, estate, or trust is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the claimant, estate, or trust may not receive any refund as a claimant, estate, or trust or as a creditor of a claimant, estate, or trust for refund for a period of five years.

(10) Refunds to which a claimant, estate, or trust is entitled under this part shall be paid from the Transportation Fund.

Amended by Chapter 223, 2006 General Session

59-13-202.5. Refunds of tax due to fire, flood, storm, accident, crime, discharge in bankruptcy, or mixing of fuels -- Filing claims and affidavits -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) (a) A retailer, wholesaler, or licensed distributor, who without fault, sustains a loss or destruction of 8,000 or more gallons of motor fuel in a single incident due to fire, flood, storm, accident, or the commission of a crime and who has paid or is required to pay the tax on the motor fuel as provided by this part, is entitled to a refund or credit of the tax subject to the conditions and limitations provided under this section.

(b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

(c) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a refund or credit under this section.

(d) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(e) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.

(f) (i) The claim shall include an affidavit containing the:

(A) name of claimant;

(B) claimant's address;

(C) date, time, and location of the incident;

(D) cause of the incident;

(E) name of the investigating agencies at the scene;

(F) number of gallons actually lost from sale; and

(G) information on any insurance coverages related to the incident.

(ii) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

(iii) This original claim and all information contained in it constitutes a permanent file with the commission in the name of the claimant.

(2) (a) A retailer, wholesaler, or licensed distributor who has paid the tax on motor fuel as provided by this part is entitled to a refund for taxes paid on that portion of an account that:

(i) relates to 4,500 or more gallons of motor fuel purchased in a single

transaction for which no payment has been received; and

(ii) has been discharged in a bankruptcy proceeding.

(b) The claimant shall file a claim for refund with the commission within 90 days from the date of the discharge.

(c) Any claimant filing a claim for a refund shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof of discharge is on the claimant who shall provide evidence of discharge to the satisfaction of the commission.

(e) The claim shall include an affidavit containing the following:

(i) the name of the claimant;

(ii) the claimant's address;

(iii) the name of the debtor that received a discharge in bankruptcy; and

(iv) the portion of the account that is subject to an order granting a discharge.

(f) The claimant shall support the claim by submitting:

(i) the original invoices or a copy of the original invoices; and

(ii) a certified copy of the notice of discharge.

(g) This original claim and all information contained in it constitutes a permanent file with the commission in the name of the claimant.

(h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall promulgate rules for the allocation of the discharge under this Subsection (2) to maximize the claimant's refund amount.

(3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler, or licensed distributor is entitled to a refund or credit of motor fuel tax if:

(i) dyed diesel fuel or special fuel is mixed with motor fuel; and

(ii) the retailer, wholesaler, or licensed distributor:

(A) returns the mixed motor fuel to the refinery for re-refining; and

(B) has paid the tax on the motor fuel as provided by this part.

(b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the date the motor fuel was returned to the refinery for re-refinement.

(c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof that the motor fuel was returned to the refinery for re-refinement is on the claimant who shall provide evidence to the satisfaction of the commission that the motor fuel was returned to the refinery for re-refinement.

(e) (i) The claim shall include an affidavit containing the:

(A) name of claimant;

(B) claimant's address;

(C) date, time, and location of the incident;

(D) nature of the incident; and

(E) number of gallons actually required to be re-refined.

(ii) The claimant shall support the claim by submitting written verification from a refinery that:

(A) the motor fuel mixed with the dyed diesel fuel or special fuel was returned to the refinery for re-refinement; and

(B) motor fuel tax was paid on the returned motor fuel.

(iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it constitutes a permanent file with the commission in the name of the claimant.

(4) (a) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant.

(b) The total amount of claims for refunds shall be paid from the Transportation Fund.

(5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may:

(i) promulgate rules to enforce this part; and

(ii) refuse to accept unsubstantiated evidence for the claim.

(b) If the commission is not satisfied with the evidence submitted in connection with the claim, it may:

(i) reject the claim; or

(ii) require additional evidence.

(6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.

(7) (a) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part.

(b) In addition to the penalties under Subsection (7)(a), the person may not receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

(8) Any refund or credit made under this section does not affect any deduction allowed under Section 59-13-207.

Amended by Chapter 134, 2008 General Session

Amended by Chapter 382, 2008 General Session

59-13-203.1. Definitions -- License requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.

(1) As used in this section:

(a) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this part for an applicant; and

(ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

(B) is a director of the applicant described in Subsection (1)(c)(i);

(C) is an employee of the applicant described in Subsection (1)(c)(i);
(D) is a partner of the applicant described in Subsection (1)(c)(i);
(E) is a trustee of the applicant described in Subsection (1)(c)(i); or
(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this part for a licensee; and

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) A person that is required to collect a tax under this part is guilty of a criminal violation as provided in Section 59-1-401 if before obtaining a license under this section that person engages in business within the state.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

(i) by the commission in accordance with this section;

(ii) without a license fee; and

(iii) if:

(A) an applicant:

(I) states the applicant's name and address in the application; and

(II) provides other information in the application that the commission may require; and

(B) the person meets the requirements of this section to be granted a license as determined by the commission;

(b) may not be assigned to another person; and

(c) is valid:

(i) only for the person named on the license; and

(ii) until:

(A) the person described in Subsection (3)(c)(i):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the commission revokes the license.

(4) The commission shall review an application and determine whether:

(a) the applicant meets the requirements of this section to be issued a license;
and

(b) a bond is required to be posted with the commission in accordance with Subsection (5) before the applicant may be issued a license.

(5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:

(i) a license under this section was revoked for a delinquency under this part for:

(A) the applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or

(ii) there is a delinquency in paying a tax under this part for:

(A) the applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:

(i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsections (5)(c) through (g); or

(ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.

(c) A bond under this Subsection (5) shall be:

(i) executed by:

(A) for an applicant, the applicant as principal, with a corporate surety; or

(B) for a licensee, the licensee as principal, with a corporate surety; and

(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

(A) the payment of all taxes under this part;

(B) the payment of any:

(I) penalty as provided in Section 59-1-401; or

(II) interest as provided in Section 59-1-402; or

(C) any other obligation of the:

(I) applicant under this part; or

(II) licensee under this part.

(d) Except as provided in Subsection (5)(f), the commission shall calculate the amount of a bond under this Subsection (5) on the basis of:

(i) commission estimates of:

(A) an applicant's tax liability under this part; or

(B) a licensee's tax liability under this part; and

(ii) the amount of a delinquency described in Subsection (5)(e) if:

(A) a license under this section was revoked for a delinquency under this part for:

(I) (Aa) an applicant; or
(Bb) a licensee;
(II) a fiduciary of the:
(Aa) applicant; or
(Bb) licensee; or
(III) a person for which the applicant, licensee, fiduciary of the applicant, or
fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax
under this part; or

(B) there is a delinquency in paying a tax under this part for:
(I) (Aa) an applicant; or
(Bb) a licensee;
(II) a fiduciary of the:
(Aa) applicant; or
(Bb) licensee; or
(III) a person for which the applicant, licensee, fiduciary of the applicant, or
fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax
under this part.

(e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
(i) for an applicant, the amount of the delinquency is the sum of:
(A) the amount of any delinquency that served as a basis for revoking the
license under this section of:

(I) the applicant;
(II) a fiduciary of the applicant; or
(III) a person for which the applicant or the fiduciary of the applicant is required
to collect, truthfully account for, and pay over a tax under this part; or

(B) the amount of tax that any of the following owe under this part:
(I) the applicant;
(II) a fiduciary of the applicant; and
(III) a person for which the applicant or the fiduciary of the applicant is required
to collect, truthfully account for, and pay over a tax under this part; or

(ii) for a licensee, the amount of the delinquency is the sum of:
(A) the amount of any delinquency that served as a basis for revoking the
license under this section of:

(I) the licensee;
(II) a fiduciary of the licensee; or
(III) a person for which the licensee or the fiduciary of the licensee is required to
collect, truthfully account for, and pay over a tax under this part; or

(B) the amount of tax that any of the following owe under this part:
(I) the licensee;
(II) a fiduciary of the licensee; and
(III) a person for which the licensee or the fiduciary of the licensee is required to
collect, truthfully account for, and pay over a tax under this part.

(f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection
(5) may not:

(i) be less than \$10,000; or

(ii) exceed \$500,000.

(g) (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be combined into one bond with any other bond required by this chapter.

(ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined into one bond with any other bond required by this chapter, the amount of that combined bond is determined by:

(A) calculating the separate amount of each bond required for each type of fuel included in the combined bond; and

(B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

(6) (a) The commission shall revoke a license under this section if:

(i) a licensee violates any provision of this part; and

(ii) before the commission revokes the license the commission provides the licensee:

(A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (6)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) tax due under this part;

(B) penalty as provided in Section 59-1-401; or

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsection (5).

Amended by Chapter 382, 2008 General Session

59-13-204. Distributors liable for tax -- Computations -- Exceptions -- Assumption of liability statements -- Motor fuel received -- Tax to be added to price of motor fuel.

(1) Distributors licensed under this part who receive motor fuel are liable for the tax as provided by this part, and shall report the receipt of the motor fuel to the commission and pay the tax as prescribed.

(2) (a) Distributors shall compute the tax on the total taxable amount of motor fuel produced, purchased, received, imported, or refined in this state, and all distributors shipping motor fuels into this state shall compute the tax on the total taxable amount of motor fuels received for sale or use in this state.

(b) All motor fuel distributed by any distributor to the distributor's branches within this state is considered to be sold at the time of this distribution and is subject to this part as if actually sold.

(c) Distributors licensed under this part may sell motor fuel to other licensed distributors without the payment or collection of the tax, if the purchasing distributor furnishes the seller with an assumption of liability statement indicating the purchasing distributor is a licensed and bonded Utah motor fuel distributor and will assume the Utah motor fuel tax responsibility on all motor fuel purchased from the seller. The seller shall report each sale to the commission in a monthly report of sales as provided

under Section 59-13-206.

(3) If motor fuels have been purchased outside of this state and brought into this state in original packages from a distributor for the use of the consumer, then the tax shall be imposed when the motor fuel is received.

(4) (a) Every distributor and retail dealer of motor fuels shall add the amount of the taxes levied and assessed by this part to the price of the motor fuels.

(b) This Subsection (4) in no way affects the method of the collection of the taxes as specified in this part.

(c) Notwithstanding Subsection (4)(a), if the Ute tribe may receive a refund under Section 59-13-201.5, the Ute tribe is not required to add the amount of the taxes levied and assessed by this part to the price of motor fuel that is purchased:

(i) by a Ute tribal member; and

(ii) at a retail station:

(A) wholly owned by the Ute tribe; and

(B) located on Ute trust land.

(d) For purposes of Subsection (4)(a), the amount of taxes levied and assessed by this part do not include the amount of the reduction of tax under Subsection 59-13-201(9).

Amended by Chapter 306, 2007 General Session

59-13-205. License certificate -- Display at place of business -- Failure to secure license -- Penalties.

(1) Each distributor of motor fuel shall, at all times, conspicuously display at the distributor's place of business or agency a license certificate issued by the commission.

(2) If any person becomes a distributor, without first securing the license required by this part, the motor fuel tax shall be immediately due and payable on account of all motor fuel received. The commission shall proceed immediately to determine the amount of distributions and shall assess immediately the motor fuel tax on account of the distributions, adding to the motor fuel tax a penalty for failure to secure the license as provided in Section 59-1-401.

Enacted by Chapter 6, 1987 General Session

59-13-206. Distributor requirements -- Reports and statements to be furnished to the commission -- Contents of statements -- Statement to be signed -- Penalties.

(1) Every distributor of motor fuel shall render to the commission, on or before the last day of each month, the following statements on forms prescribed by the commission:

(a) the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month;

(b) an itemized account of the date and quantities of motor fuel sold, used, or received for sale or use, stating separately the sales made in interstate commerce and those made in broken packages; and

(c) any other information incidental to the enforcing of this part which the commission may require.

(2) The statement shall be signed by a responsible representative of the distributor. This signature need not be notarized, but when signed is considered to have been made under oath. Bills shall be rendered to all purchasers of motor fuel by distributors.

(3) A penalty for failure to file the statement required by Subsection (1) shall be as provided under Section 59-1-401.

Enacted by Chapter 6, 1987 General Session

59-13-207. Deductions allowed -- Prorating of deduction to retail dealers.

(1) There is deducted 2% from the gross amount of motor fuel taxable under this part to allow for all evaporation, loss in handling, and expenses of collection. All distributors shall report the gross amount of taxable motor fuel which is produced, received, refined, or sold in this state from which this deduction shall be made.

(2) At the time of submitting the report and payment of the tax, the producers and refiners shall further submit evidence to the satisfaction of the commission that from the amount of the 2% deduction made by them, one half of the deduction has been paid to the registered retail dealers on quantities sold to them during the period covered by the report.

Enacted by Chapter 6, 1987 General Session

59-13-208. Motor fuel shipments from out of state -- Reports required.

(1) Every person delivering within this state any motor fuel which has been shipped from outside the state shall, on or before the last day of each month, report in writing all deliveries during the preceding month to the commission on forms prescribed by it. The report shall show:

- (a) the date of delivery;
- (b) the person who received the delivery;
- (c) the quantity as shown by the bill of lading; and
- (d) any other information the commission may require.

(2) The commission may require from carriers necessary information regarding the shipment of other petroleum products.

Enacted by Chapter 6, 1987 General Session

59-13-209. Due date -- Delinquency -- Penalties -- Interest -- Collection procedure.

(1) (a) The motor fuel tax is due and payable by the distributor on or before the last day of each month to the commission for the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month.

(b) The commission shall receipt the distributor for taxes paid and shall promptly

deposit all revenue with the state treasurer.

(2) (a) If any distributor fails or refuses to pay any tax when it becomes due and payable, the tax is delinquent.

(b) If a distributor is delinquent in tax payments, the commission shall impose a penalty as provided under Section 59-1-401.

(c) The amount of the tax shall bear interest at the rate and in the manner prescribed in Section 59-1-402.

(3) (a) A report or payment of tax is not considered delinquent if the envelope in which the report or remittance is enclosed bears a post office cancellation mark dated on or before the date on which the report or payment is due.

(b) The commission, upon receipt of a report or remittance described in Subsection (3)(a), shall treat the report or payment as if it had been received on the date it was due.

(4) If any part of a tax due is deficient or delinquent because of negligence or disregard of this part, or in the case of false or fraudulent monthly reports, or intent to evade the tax, a penalty shall be added to the tax due as provided in Section 59-1-401.

(5) (a) A tax due and unpaid under this part constitutes a debt due the state and may be collected, together with interest, penalty, and costs, by appropriate judicial proceeding.

(b) The remedy described in Subsection (5)(a) is in addition to all other remedies.

(6) If the tax imposed by this part is not paid when it is due, collection may be made in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

Amended by Chapter 212, 2009 General Session

59-13-210. Commission rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to administer and enforce this part.

Amended by Chapter 212, 2009 General Session

59-13-211. Distributor's records -- Audit requirements -- Deposit of revenues with treasurer -- Dedicated credits.

(1) A distributor who does not maintain adequate motor fuel records at one location in this state so that an audit of the records may be made, may be required to:

(a) forward the necessary records to Salt Lake City; or

(b) pay the necessary expenses of an auditor to make the examination at the proper division office.

(2) Funds collected under this section:

(a) shall be deposited with the state treasurer; and

(b) are dedicated credits for the commission.

Amended by Chapter 212, 2009 General Session

59-13-212. Penalties for failure to make reports or returns -- Criminal penalties.

Any person who violates this part or who fails or neglects to make any statement, report, or return required by this part, where the penalty is not otherwise specifically prescribed, is guilty of a criminal violation as provided in Section 59-1-401.

Enacted by Chapter 6, 1987 General Session

59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and credited to Transportation Fund -- Reduction of tax in limited circumstances.

(1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

- (i) removal of undyed diesel fuel from any refinery;
- (ii) removal of undyed diesel fuel from any terminal;
- (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;
- (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under this part unless the tax has been collected under this section;
- (v) any untaxed special fuel blended with undyed diesel fuel; or
- (vi) use of untaxed special fuel other than propane or electricity.

(b) The tax imposed under this section shall only be imposed once upon any special fuel.

(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

- (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

- (ii) is sold to this state or any of its political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

- (i) sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions;
- (ii) exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;
- (iii) used in a vehicle off-highway;
- (iv) used to operate a power take-off unit of a vehicle;
- (v) used for off-highway agricultural uses;
- (vi) used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or
- (vii) used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if it is:

- (a) (i) purchased for business use in machinery and equipment not registered

and not required to be registered for highway use; and

(ii) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act; or

(b) propane or electricity.

(4) Upon request of a buyer meeting the requirements under Subsection (3), the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

(5) The special fuel tax shall be paid by the supplier.

(6) (a) The special fuel tax shall be paid by every user who is required by Sections 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

(b) The user shall receive a refundable credit for special fuel taxes paid on purchases which are delivered into vehicles and for which special fuel tax liability is reported.

(7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the commission from taxes and license fees under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the special fuel tax.

(c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303 may be used by the commission as a dedicated credit to cover the costs of electronic credentialing as provided in Section 41-1a-303.

(8) The commission may either collect no tax on special fuel exported from the state or, upon application, refund the tax paid.

(9) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased special fuel from a supplier or from a retail dealer of special fuel and has paid the tax on the special fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund in a manner prescribed by the commission.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (9)(a).

(10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as provided in Subsection (9) and this Subsection (10).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund for off-highway and nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

(c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural uses shall be made in accordance with the tax return procedures under Section 59-13-202.

(11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is reduced to the extent provided in Subsection (11)(b) if:

(i) the Navajo Nation imposes a tax on the special fuel;
(ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the person required to pay the tax is an enrolled member of the Navajo Nation;
and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (11) for the administration of the reduction of tax.

(b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that difference is greater than \$0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

(ii) The difference described in Subsection (11)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the special fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the special fuel.

(c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on the special fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (11).

(e) The agreement required under Subsection (11)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (11); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of suppliers, distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (11)(f)(ii).

(ii) The notice described in Subsection (11)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on special fuel;

(B) the effective date of the rate change of the tax described in Subsection (11)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

(g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not permitted under this Subsection (11) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (11) and the agreement required by Subsection (11)(a), this Subsection (11) governs.

(12) (a) Beginning on January 1, 2009, a tax imposed under this section on compressed natural gas is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be increased or decreased proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a).

(b) Beginning on July 1, 2011, a tax imposed under this section on liquified natural gas is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be increased or decreased proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a).

Amended by Chapter 259, 2011 General Session

59-13-301.5. Refund of taxes impacting Ute tribe and Ute tribal members.

(1) In accordance with this section, the Ute tribe may receive a refund from the state of amounts paid in accordance with Section 59-13-301 if:

(a) the amounts paid by the Ute tribe when it purchases the special fuel includes the amount paid in taxes on the special fuel;

(b) the special fuel is purchased for use by:

(i) the Ute tribe; or

(ii) a Ute tribal member from a retail station that is:

(A) wholly owned by the Ute tribe; and

(B) located on Ute trust land; and

(c) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of Subsection (3).

(2) In addition to the agreement required by Subsection (1), the commission shall enter into an agreement with the Ute tribe that:

- (a) provides an allocation formula or procedure for determining:
 - (i) the amount of special fuel sold by the Ute tribe to a Ute tribal member; and
 - (ii) the amount of special fuel sold by the Ute tribe to a person who is not a Ute tribal member; and
- (b) provides a process by which:
 - (i) the Ute tribe obtains a refund permitted by this section; and
 - (ii) reports and remits special fuel tax to the state for sales made to persons who are not Ute tribal members.
- (3) The agreement required under Subsection (1):
 - (a) may not:
 - (i) authorize the state to impose a tax in addition to a tax imposed under this chapter;
 - (ii) provide a refund, credit, or similar tax relief that is greater or different than the refund permitted under this section; or
 - (iii) affect the power of the state to establish rates of taxation; and
 - (b) shall:
 - (i) provide that the state agrees to allow the refund described in this section;
 - (ii) be in writing;
 - (iii) be signed by:
 - (A) the governor; and
 - (B) the chair of the Business Committee of the Ute tribe;
 - (iv) be conditioned on obtaining any approval required by federal law; and
 - (v) state the effective date of the agreement.
- (4) (a) The governor shall report to the commission by no later than February 1 of each year as to whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
- (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the refund permitted under this section is not allowed beginning the January 1 following the date the agreement terminates.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules regarding the procedures for seeking a refund agreed to under the agreement described in Subsection (2).

Amended by Chapter 382, 2008 General Session

59-13-302. Definitions -- License requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon property.

- (1) As used in this section:
 - (a) "applicant" means a person that:
 - (i) is required by this section to obtain a license; and
 - (ii) submits an application:
 - (A) to the commission; and
 - (B) for a license under this section;
 - (b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and

(ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

(B) is a director of the applicant described in Subsection (1)(c)(i);

(C) is an employee of the applicant described in Subsection (1)(c)(i);

(D) is a partner of the applicant described in Subsection (1)(c)(i);

(E) is a trustee of the applicant described in Subsection (1)(c)(i); or

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) A person that is required to collect an amount under this part is guilty of a criminal violation as provided in Section 59-1-401 if before obtaining a license under this section that person engages in business within the state.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

(i) by the commission in accordance with this section;

(ii) without a license fee; and

(iii) if:

(A) an applicant:

(I) states the applicant's name and address in the application; and

(II) provides other information in the application that the commission may require; and

(B) the person meets the requirements of this section to be granted a license as determined by the commission;

(b) may not be assigned to another person; and

(c) is valid:

(i) only for the person named on the license; and

(ii) until:

- (A) the person described in Subsection (3)(c)(i):
 - (I) ceases to do business; or
 - (II) changes that person's business address; or
- (B) the commission revokes the license.
- (4) The commission shall review an application and determine whether:
 - (a) the applicant meets the requirements of this section to be issued a license;

and

(b) a bond is required to be posted with the commission in accordance with Subsection (5) before the applicant may be issued a license.

(5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:

(i) a license under this section was revoked for a delinquency under this part for:

- (A) the applicant;
- (B) a fiduciary of the applicant; or
- (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or

(ii) there is a delinquency in paying a tax under this part for:

- (A) the applicant;
- (B) a fiduciary of the applicant; or
- (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:

(i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsections (5)(c) through (g); or

(ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.

(c) A bond under this Subsection (5) shall be:

(i) executed by:

- (A) for an applicant, the applicant as principal, with a corporate surety; or
- (B) for a licensee, the licensee as principal, with a corporate surety; and

(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

(A) the payment of all amounts under this part;

(B) the payment of any:

- (I) penalty as provided in Section 59-1-401; or
- (II) interest as provided in Section 59-1-402; or
- (C) any other obligation of the:

(I) applicant under this part; or

(II) licensee under this part.

(d) Except as provided in Subsection (5)(f), the commission shall calculate the amount of a bond under this Subsection (5) on the basis of:

(i) commission estimates of:

- (A) an applicant's liability for any amount under this part; or
- (B) a licensee's liability for any amount under this part; and
- (ii) the amount of a delinquency described in Subsection (5)(e) if:
 - (A) a license under this section was revoked for a delinquency under this part

for:

- (I) (Aa) an applicant; or
- (Bb) a licensee;
- (II) a fiduciary of the:
 - (Aa) applicant; or
 - (Bb) licensee; or
- (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or

- (B) there is a delinquency in paying an amount under this part for:

- (I) (Aa) an applicant; or
- (Bb) a licensee;
- (II) a fiduciary of the:
 - (Aa) applicant; or
 - (Bb) licensee; or
- (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.

- (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):

- (i) for an applicant, the amount of the delinquency is the sum of:

- (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; or
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or

- (B) the amount that any of the following owe under this part:

- (I) the applicant;
- (II) a fiduciary of the applicant; and
- (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or

- (ii) for a licensee, the amount of the delinquency is the sum of:

- (A) the amount of any delinquency that served as a basis for revoking the license under this section of:

- (I) the licensee;
- (II) a fiduciary of the licensee; or
- (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or

- (B) the amount that any of the following owe under this part:

- (I) the licensee;
- (II) a fiduciary of the licensee; and

(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.

(f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5) may not:

(i) be less than \$10,000; or

(ii) exceed \$500,000.

(g) (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be combined into one bond with any other bond required by this chapter.

(ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined into one bond with any other bond required by this chapter, the amount of that combined bond is determined by:

(A) calculating the separate amount of each bond required for each type of fuel included in the combined bond; and

(B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

(6) (a) The commission shall revoke a license under this section if:

(i) a licensee violates any provision of this part; and

(ii) before the commission revokes the license the commission provides the licensee:

(A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (6)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) amounts due under this part;

(B) penalty as provided in Section 59-1-401; or

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsection (5).

(7) (a) If any person ceases to be a supplier within the state by reason of the discontinuance, sale, or transfer of the person's business, the supplier shall notify the commission in writing at the time the discontinuance, sale, or transfer takes effect.

(b) The notice shall give the date of discontinuance and, in the event of a sale, the date of the sale and the name and address of the purchaser or transferee.

(c) Taxes on all special fuel delivery or removal made prior to the discontinuance, sale, or transfer, shall become due and payable on the date of discontinuance, sale, or transfer.

(d) The supplier shall make a report and pay all taxes, interest, and penalties and surrender to the commission the license certificate that was issued to the supplier by the commission.

(8) (a) The tax imposed by this part shall be a lien upon the property of any supplier liable for an amount of tax that is required to be collected, if the supplier sells the business, stock of goods, or quits business, and if the supplier fails to make a final return and payment within 15 days after the date of selling or quitting business.

(b) The successor or assigns, if any, shall be required to withhold a sufficient amount of the purchase money to cover the amount of the taxes that are required to be

collected and interest or penalties due and paid under Sections 59-1-401 and 59-1-402 until the former owner produces a receipt from the commission showing that the taxes have been paid or a certificate stating that no amount of tax is due. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be personally liable for the payment of the amount that is due.

Amended by Chapter 382, 2008 General Session

59-13-303. Special fuel user permits -- Application -- Revocation of permits under certain circumstances.

(1) (a) Except as provided in Subsection (1)(b), each user shall, prior to the use of the fuel in a qualified motor vehicle, apply to the commission on forms prescribed by the commission for a special fuel user permit. When the application is approved by the commission, a single special fuel user permit shall be issued to the user.

(b) In place of the special fuel user permit issued under Subsection (1)(a), a user may purchase a special fuel user trip permit. A special fuel user trip permit is valid for 96 hours or until the qualified vehicle leaves the state, whichever occurs first.

(c) The fee for the special fuel user trip permit is \$25.

(2) A special fuel user permit number shall be assigned to each licensed user and is nontransferable and valid until surrendered by the user for nonuse or until revoked by the commission.

(3) The special fuel user permit expires December 31 of each year. Special fuel user permits for the calendar year shall be honored until February 28 of the following year. An application shall be filed with the commission each year for a new special fuel user permit for vehicles operated by a licensed user.

(4) (a) The special fuel user permit shall be kept in the passenger compartment of each vehicle, or as otherwise authorized by the commission.

(b) A user that does not comply with the requirements of this section may be required to purchase a special fuel user trip permit.

(5) The commission may revoke the special fuel user permit issued under this section from any person refusing or neglecting to comply with this part.

(6) Any user reporting Utah special fuel tax liability under Part 5, Interstate Agreements, is exempted from the permit requirements of this section.

Amended by Chapter 198, 2005 General Session

59-13-304. Inspection of clean fuel vehicles.

(1) The commission may require each clean fuel vehicle to be inspected for safe operation.

(2) Each clean fuel vehicle shall be equipped with an approved and properly installed carburetion system if it is powered by a fuel that is gaseous at standard atmospheric conditions.

Amended by Chapter 153, 2008 General Session

59-13-305. User report required -- Contents of report -- Signature -- Penalties -- Exemptions from requirements -- Change of exemption status -- Duty to notify commission.

(1) Unless exempted by Subsection (5), each user shall file with the commission, on or before the last day of the month following the end of a reporting period, a report on forms prescribed by the commission showing:

(a) the amount of fuel purchased and the amount of fuel used during the preceding reporting period by that user in the state; and

(b) any other information the commission may require to carry out the purposes of this part.

(2) The report shall be signed by the user or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath.

(3) A penalty is imposed under Section 59-1-401 for failure to file reports as provided in this section for each report not filed, regardless of the imposition of other penalties under this part.

(4) (a) Each user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and has facilities for bulk storage of special fuels shall declare special fuel tax liability for any nonqualified motor vehicle on the user report required by Subsection (1).

(b) Credit shall be given on the report for any special fuel taxes paid on purchases for any nonqualified vehicle. Purchase records must be maintained to substantiate the amount of any credit claimed.

(5) (a) The following users are exempt from the filing requirements of Subsections (1) and (2) for the motor vehicles specified:

(i) a user who purchases a special fuel user trip permit for all of its operations for qualified vehicles for the reporting period, except a user having a special fuel user permit under Subsection 59-13-303(1)(a);

(ii) a user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and does not have facilities for bulk storage of special fuels;

(iii) a user of special fuel, for which the tax imposed by this chapter has already been paid; or

(iv) a user that has a motor vehicle powered by special fuel for which the tax is paid under an interstate fuel tax agreement under Section 59-13-502.

(b) (i) The exemption under Subsection (5)(a)(iii) applies only when the user retains records verifying that all special fuel purchases for the exempt vehicle were taxed as required under this part.

(ii) The commission may at the time of application or renewal of a special fuel user permit under Section 59-13-303 require that the user certify:

(A) that the user qualifies for an exemption under Subsection (5)(a)(iii); and

(B) whether the user has facilities for bulk storage of special fuel.

Amended by Chapter 198, 2005 General Session

59-13-306. Due date of special fuel tax.

The special fuel tax is due and payable at the offices of the commission on or before the last day of the month following each reporting period. If not paid at the offices of the commission or if the envelope enclosing the report or remittance does not bear a post office cancellation mark dated on or before the due date, the special fuel tax is delinquent.

Enacted by Chapter 6, 1987 General Session

59-13-307. Supplier reports -- Signature required -- Penalties.

(1) Each supplier shall file with the commission, on or before the last day of each month, a report on forms prescribed by the commission showing the amount of fuel delivered or removed during the preceding calendar month and any other information the commission may require to carry out the purposes of this part.

(2) The report shall be signed by the supplier or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath. The report shall be accompanied by a remittance payable to the commission for the amount of special fuel tax due.

(3) A penalty is imposed under Section 59-1-401 upon each licensee and bonded supplier who fails to file any report as prescribed regardless of the imposition of other penalties under this part.

Amended by Chapter 9, 2001 General Session

59-13-308. Delinquency -- Penalties -- Interest.

If any user becomes delinquent in tax payments under this part, all licenses or permits issued under this part are automatically revoked. In addition, the commission shall impose a penalty determined under Section 59-1-401. The amount of the delinquent tax and the penalty shall bear interest at the rate and in the manner prescribed in Section 59-1-402.

Amended by Chapter 198, 2005 General Session

59-13-310. Special fuel from out of state -- Reports required -- Contents of reports.

(1) Every person who delivers special fuel from outside the state to any consignee within the state shall file with the commission on or before the last day of each month a report on forms prescribed by the commission showing:

- (a) all deliveries of special fuel within the state during the preceding month; and
- (b) the points of origin and original destination.

(2) Where any consignment of special fuel was diverted in transit and delivered within this state, the carrier making delivery of this consignment shall report to the commission:

- (a) the place of the delivery of the consignment;
- (b) to whom the consignment was delivered;
- (c) the number of gallons of special fuel transported or delivered;

- (d) the date of delivery and the name of the consignor and of the consignee;
- and
- (e) any other information the commission may require.

Amended by Chapter 271, 1997 General Session

59-13-311. Tax is a lien against vehicle -- Removable only when tax is paid.

The special fuel tax constitutes a lien upon, and has the effect of an execution duly levied against, any vehicle in which special fuel is used. The lien may not be removed until the special fuel tax is paid or the vehicle subject to the lien is sold in payment of the tax.

Enacted by Chapter 6, 1987 General Session

59-13-312. Special fuel user records -- Auditing requirements -- Deposit of funds with treasurer as dedicated credits.

(1) (a) A user claiming a refund for taxes paid to a supplier shall retain on file a receipt or invoice, or a microfilm or microfiche of the receipt or invoice, evidencing the purchase of special fuel and the payment of the tax.

(b) The commission may require the user to furnish summaries or copies of original documentation substantiating the amount of refund claimed.

(2) If the payer of this tax or the person dealing in special fuel does not maintain records in this state so that an audit of the records may be made by the commission or its representative, that person may be required to:

(a) forward the necessary records to the commission for examination; or

(b) pay the necessary expenses for an auditor of the commission to travel to the location of the records outside of this state to make an examination.

(3) Funds collected under this section:

(a) shall be deposited with the state treasurer; and

(b) are dedicated credits for the commission.

Amended by Chapter 212, 2009 General Session

59-13-313. Commission to enforce the laws -- Estimations of tax -- Penalties -- Notice of determinations -- Information sharing with other states.

(1) (a) The commission is charged with the enforcement of this part and may prescribe rules relating to administration and enforcement of this part.

(b) The commission may coordinate with state and federal agencies in the enforcement of this part.

(c) Enforcement procedures may include checking diesel fuel dye compliance of storage facilities and tanks of vehicles, in a manner consistent with state and federal law.

(2) (a) If the commission has reason to question the report filed or the amount of special fuel tax paid to the state by a user or supplier, the commission may compute

and determine the amount to be paid based upon the best information available to the commission.

(b) Any added amount of special fuel tax determined to be due under this section shall:

- (i) have added to it a penalty as provided under Section 59-1-401; and
- (ii) bear interest at the rate and in the manner prescribed in Section 59-1-402.

(c) (i) The commission shall give to the user or supplier written notice of the commission's determination.

(ii) The commission may:

(A) serve the notice described in Subsection (2)(c)(i) personally; or

(B) send the notice described in Subsection (2)(c)(i) to the user or supplier at the user or supplier's last-known address as it appears in the records of the commission.

(3) The commission may, upon the duly received request of the officials to whom the enforcement of the special fuel laws of any other state are entrusted, forward to those officials any information which the commission may have in its possession relative to the delivery, removal, production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment of special fuel by any person.

Amended by Chapter 212, 2009 General Session

59-13-314. Special fuel user permit required before registration of vehicle.

Before registering any motor vehicle which is operated by special fuels, the registered owner or lessee of the vehicle shall obtain a valid special fuel user permit for the current year if required under Section 59-13-303.

Amended by Chapter 153, 2008 General Session

59-13-315. Transfer of ownership of vehicle -- Lien to be removed -- Tax clearance by commission.

The transfer of registered ownership of any motor vehicle subject to a lien of the tax imposed by this part may be effected only after a certificate of clearance of the tax has been issued by the commission.

Enacted by Chapter 6, 1987 General Session

59-13-318. Refunds.

A refund that a taxpayer is allowed under this chapter shall be paid from the Transportation Fund.

Amended by Chapter 212, 2009 General Session

59-13-320. Penalties for violations of the special fuel tax provisions.

(1) The following offenses, unless otherwise provided, are class B misdemeanors:

- (a) failing or refusing to pay the tax imposed by this part;
 - (b) engaging in business in this state as a supplier without being the holder of an uncanceled license to engage in this business;
 - (c) operating a motor vehicle, which requires special fuel, upon the highways of this state without a valid special fuel user permit;
 - (d) failing to make any of the reports required by this part;
 - (e) making any false statement in any application, report, or statement required by this part;
 - (f) refusing to permit the commission or any employee to examine records as provided by this part;
 - (g) failing to keep proper records of quantities of fuel received, produced, refined, manufactured, compounded, used, or delivered in this state as required by this part;
 - (h) making any false statement in connection with an application for the refund of any money or taxes provided in this part; or
 - (i) violating any of the provisions of this part for which no penalty is provided.
- (2) Any person required to make, render, sign, or verify any report and who makes any false or fraudulent report with intent to defeat or evade the assessment required by law to be made, is subject to a criminal violation under Section 59-1-401.
- (3) The remedies of the state are cumulative and no action taken by the commission or any of its officers to pursue any remedy may be construed to be an election on the part of the state to exclude any other allowed by law.

Amended by Chapter 7, 2003 General Session

59-13-320.5. Use of dyed diesel on highways prohibited -- Penalty.

- (1) A person may not operate a motor vehicle on a highway if a fuel supply tank of the motor vehicle contains dyed diesel fuel, unless:
- (a) permitted under federal law;
 - (b) (i) the motor vehicle is used on the highway only to travel from one parcel of land owned or operated by the owner to another parcel of land owned or operated by the owner; and
 - (ii) the motor vehicle's travel on the highway is necessary for furtherance of agricultural purposes; or
 - (c) the motor vehicle is special mobile equipment, as defined in Section 41-1a-102, including off-road motorized construction or maintenance equipment, that is only incidentally operated or moved on a highway in connection with a construction project.
- (2) A person who violates Subsection (1) shall pay a penalty assessed by the commission as follows:
- (a) the greater of \$500 or \$5 per gallon of dyed diesel fuel within each fuel supply tank of the motor vehicle, based on the maximum storage capacity of each fuel supply tank; or
 - (b) for a second and subsequent offense, the greater of \$1,000 or \$10 per gallon of dyed diesel fuel within each fuel supply tank of the motor vehicle, based on

the maximum storage capacity of each fuel supply tank.

(3) The penalty imposed under this section:

(a) is in addition to any other taxes, interest, or penalties imposed under this chapter; and

(b) shall be deposited in the Transportation Fund.

(4) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise the penalty imposed under this section.

Enacted by Chapter 29, 2001 General Session

59-13-321. Wholesaler option for rack distributions tax payments -- Notification -- Security.

(1) As used in this section "wholesaler" means a person who receives a rack distribution of diesel fuel from a supplier for purposes of resale.

(2) (a) Upon agreement of wholesaler and supplier, the payment of the taxes to the supplier under this part may be made on or before one business day prior to the time that the supplier is required to remit those taxes to the commission.

(b) The wholesaler shall provide written notification to the supplier of the wholesaler's intent to exercise the payment option under Subsection (2)(a) at least 30 days prior to the payment.

(c) The wholesaler's payment of the taxes under Subsection (2)(a) shall be made by electronic funds transfer.

(3) Upon the wholesaler's exercise of the payment option provided in Subsection (2), the supplier may require security for the payment of the taxes if no security exists between the wholesaler and the supplier.

(4) At the option of the supplier, the wholesaler's exercise of the payment option provided under this section may be terminated if the wholesaler fails to:

(a) remit timely payment of the taxes as provided in Subsection (2); or

(b) provide security as provided in Subsection (3).

Enacted by Chapter 271, 1997 General Session

59-13-322. Refunds of tax due to fire, flood, storm, accident, crime, discharge in bankruptcy, or mixing of fuels -- Filing claims and affidavits -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) (a) A retailer, wholesaler, licensed distributor, or licensed supplier, who without fault, sustains a loss or destruction of 7,000 or more gallons of diesel fuel in a single incident due to fire, flood, storm, accident, or the commission of a crime and who has paid or is required to pay the tax on the special fuel as provided by this part, is entitled to a refund or credit of the tax subject to the conditions and limitations provided under this section.

(b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

(c) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of special fuel

is not eligible for a refund or credit under this section.

(d) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(e) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.

(f) (i) The claim shall include an affidavit containing the:

(A) name of claimant;

(B) claimant's address;

(C) date, time, and location of the incident;

(D) cause of the incident;

(E) name of the investigating agencies at the scene;

(F) number of gallons actually lost from sale; and

(G) information on any insurance coverages related to the incident.

(ii) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

(iii) This original claim and all information contained in it constitutes a permanent file with the commission in the name of the claimant.

(2) (a) A retailer, wholesaler, licensed distributor, or licensed supplier who has paid the tax on special fuel as provided by this part is entitled to a refund for taxes paid on that portion of an account that:

(i) relates to 4,500 or more gallons of special fuel purchased in a single transaction for which no payment has been received; and

(ii) has been discharged in a bankruptcy proceeding.

(b) The claimant shall file a claim for refund with the commission within 90 days from the date of the discharge.

(c) Any claimant filing a claim for a refund shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof of discharge is on the claimant who shall provide evidence of discharge to the satisfaction of the commission.

(e) The claim shall include an affidavit containing the following:

(i) the name of the claimant;

(ii) the claimant's address;

(iii) the name of the debtor that received a discharge in bankruptcy; and

(iv) the portion of the account that is subject to an order granting a discharge.

(f) The claimant shall support the claim by submitting:

(i) the original invoices or a copy of the original invoices; and

(ii) a certified copy of the notice of discharge.

(g) This original claim and all information contained in it constitutes a permanent file with the commission in the name of the claimant.

(h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall promulgate rules for the allocation of the discharge under this Subsection (2) to maximize the claimant's refund amount.

(3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler, licensed distributor, or licensed supplier is entitled to a refund or credit of special fuel tax if:

- (i) dyed diesel fuel or special fuel is mixed with special fuel; and
- (ii) the retailer, wholesaler, licensed distributor, or licensed supplier:
 - (A) returns the mixed special fuel to the refinery for re-refining; and
 - (B) has paid the tax on the special fuel as provided by this part.
- (b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the date the special fuel was returned to the refinery for re-refinement.
- (c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.
- (d) The burden of proof that the special fuel was returned to the refinery for re-refinement is on the claimant who shall provide evidence to the satisfaction of the commission that the special fuel was returned to the refinery for re-refinement.
- (e) (i) The claim shall include an affidavit containing the:
 - (A) name of claimant;
 - (B) claimant's address;
 - (C) date, time, and location of the incident;
 - (D) nature of the incident; and
 - (E) number of gallons of special fuel actually required to be re-refined.
- (ii) The claimant shall support the claim by submitting written verification from a refinery that:
 - (A) the special fuel mixed with the dyed diesel fuel or special fuel was returned to the refinery for re-refinement; and
 - (B) special fuel tax was paid on the returned special fuel.
- (iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it constitutes a permanent file with the commission in the name of the claimant.
- (4) (a) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant.
- (b) The total amount of claims for refunds shall be paid from the Transportation Fund.
- (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may:
 - (i) promulgate rules to enforce this part; and
 - (ii) refuse to accept unsubstantiated evidence for the claim.
- (b) If the commission is not satisfied with the evidence submitted in connection with the claim, it may:
 - (i) reject the claim; or
 - (ii) require additional evidence.
- (6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.
- (7) (a) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part.
- (b) In addition to the penalties under Subsection (7)(a), the person may not

receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

Amended by Chapter 134, 2008 General Session

Amended by Chapter 382, 2008 General Session

59-13-401. Aviation fuel tax -- Rate.

- (1) A tax is imposed upon aviation fuel at the rates provided in this section.
- (2) Except as provided by Subsection (3), the tax on aviation fuel shall be 9 cents per gallon.
- (3) Aviation fuel purchased for use by a federally certificated air carrier is subject to a tax of:
 - (a) 4 cents per gallon on aviation fuel purchased other than at an international airport:
 - (i) located within a county of the first class; and
 - (ii) that has a United States customs office on its premises; or
 - (b) 2.5 cents per gallon on aviation fuel purchased at an international airport:
 - (i) located within a county of the first class; and
 - (ii) that has a United States customs office on its premises.

Amended by Chapter 222, 2009 General Session

Amended by Chapter 358, 2009 General Session

59-13-402. Revenue from taxes deposited with treasurer -- Credit to Aeronautics Restricted Account -- Purposes for which funds may be used -- Allocation of funds -- Reports -- Returns required.

- (1) (a) All revenue received by the commission under this part shall be deposited daily with the state treasurer who shall credit all of the revenue collected to the Transportation Fund.
 - (b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the aviation fuel tax.
 - (c) Refunds to which taxpayers are entitled under this part shall be paid from the Transportation Fund.
- (2) The state treasurer shall place an amount equal to the total amount received from the sale or use of aviation fuel in the Aeronautics Restricted Account created by Section 72-2-126.
- (3) The tax imposed on each gallon of aviation fuel under Section 59-13-401 shall be allocated to the airport where the aviation fuel was sold and to aeronautical operations of the Department of Transportation as follows:

	Total Tax Allocate d	Allocation to Airport	Allocation to Aeronautic al Operations
(a) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Federally Certificated Air Carrier Other than at an International Airport Located Within a County of the First Class that has a United States Customs Office on its Premises	\$.04	\$.03	\$.01
(b) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Certificated Air Carrier at an International Airport Located Within a County of the First Class that has a United States Customs Office on its Premises	\$.02 5	\$.015	\$.01
(c) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Person Other than a Federally Certificated Air Carrier at an International Airport Located Within a County of the First Class that has a United States Customs Office on its Premises	\$.09	\$.00	\$.09
(d) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Person Other than a Federally Certificated Air Carrier Other than at an International Airport Located Within a County of the First Class that has a United States Customs Office on its Premises	\$.09	\$.03	\$.06

(e) The allocation to the publicly used airport may be used at the discretion of the airport's governing authority for the:

(i) construction, improvements, operation, and maintenance of publicly used airports in the state; and

(ii) payment of principal and interest on indebtedness incurred for the purposes

described in Subsection (3)(e)(i).

(f) Upon appropriation by the Legislature, the allocation to aeronautical operations of the Department of Transportation shall be used as provided in the Aeronautics Restricted Account created by Section 72-2-126.

(4) (a) The commission shall require reports and returns from distributors, retail dealers, and users in order to enable the commission and the Department of Transportation to allocate the revenue to be credited to:

- (i) the Aeronautics Restricted Account created by Section 72-2-126; and
- (ii) the separate accounts of individual airports.

(b) (i) Except as provided by Subsection (4)(b)(ii), any unexpended amount remaining in the account of any publicly used airport on the first day of January, April, July, and October shall be paid to the authority operating the airport.

(ii) Aviation fuel tax allocated to any airport owned and operated by a city of the first class shall be paid to the city treasurer on the first day of each month.

(c) The state treasurer shall place aviation fuel tax collected on fuel sold at places other than publicly used airports in the Aeronautics Restricted Account created by Section 72-2-126.

Amended by Chapter 222, 2009 General Session

Amended by Chapter 358, 2009 General Session

59-13-403. Administration and penalties -- Bond requirements.

(1) All administrative and penalty provisions of Part 2, Motor Fuel, apply to the administration of Part 4, Aviation Fuel.

(2) Notwithstanding Subsection (1), a distributor is not required to furnish a bond if the distributor:

- (a) meets the definition of distributor under Subsection 59-13-102(5)(d); and
- (b) has an average tax liability of \$500 or less per month.

Amended by Chapter 322, 2006 General Session

59-13-501. Interstate fuel tax agreements by commission -- Contents of agreement -- Rulemaking power -- Legal remedies -- Conflicts.

(1) The commission may enter into cooperative agreements with other states for the exchange of information and auditing of users of motor fuel and special fuels used in fleets of motor vehicles operated or intended to operate interstate. Any agreement, arrangement, declaration, or amendment is not effective until stated in writing and filed with the commission.

- (2) Any agreement may provide for:
 - (a) determining the base state for users;
 - (b) users' records requirements;
 - (c) audit procedures;
 - (d) exchange of information;
 - (e) persons eligible for tax licensing;
 - (f) defining qualified motor vehicles;

- (g) determining if bonding is required;
- (h) specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting;
- (i) determining methods for collecting and forwarding of motor fuel and special fuel taxes and penalties to another jurisdiction; and
- (j) any other provisions designed to facilitate the administration of the agreement.

(3) The commission may, as required by the terms of an agreement, forward to officers of another state any information in the commission's possession relative to the manufacture, receipts, sale, use, transportation, or shipment of motor fuel or special fuel by any person. The commission may disclose the location of officers, motor vehicles, and other real and personal property of users of motor fuel or special fuel to officers of another state.

(4) Any agreement may provide for each state to audit the records of persons based in the state, to determine if the motor fuel or special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state to each state in which the person has taxable use of motor fuels and special fuels. For persons not based in this state and who have taxable use of motor fuels or special fuels in this state, the commission may serve the audit findings received from another state, in the form of an assessment, on the person as if the audit were conducted by the commission.

(5) Any agreement entered into pursuant to this section does not preclude the commission from auditing the records of any person covered by the provisions of this chapter.

(6) The legal remedies for any person served with an order or assessment under this section are as prescribed in this chapter.

(7) If the commission enters into any agreement under the authority of this section, and the provisions established in the agreement are in conflict with any rules promulgated by the commission, the agreement provisions prevail.

Enacted by Chapter 75, 1988 General Session

59-13-502. Interstate fuel tax agreements -- Compliance procedures.

(1) After the commission's membership in an agreement provided for under Section 59-13-501 becomes effective, a taxpayer shall, for vehicles powered by special fuel qualifying under the agreement, be required to pay the special fuel tax at the rate established under Part 3 in accordance with the provisions of the agreement.

(2) Any taxpayer who has vehicles, qualifying under an agreement entered into under this part, which operate on motor fuel as defined under Section 59-13-102, shall account for and pay tax on fuel used in those vehicles at the rate established under Part 2 in accordance with the agreement, and receive credit for taxes paid under Part 2 on purchases as provided for in the agreement.

(3) The statutory notice procedures of this chapter, penalty provisions of Section 59-1-401, and adjudicative procedures in Title 63G, Chapter 4, Administrative Procedures Act, are applicable to this part.

Amended by Chapter 382, 2008 General Session